

NSAI FOI 49/24 Internal Review: Relied upon sections of Freedom of Information Act 2014 (as amended):

Section 15, Refusal on administrative grounds to grant FOI requests:

15. (1) A head to whom an FOI request is made may refuse to grant the request where—

(a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken,

...

Section 36, Commercially sensitive information:

36. (1) Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains—

(a) trade secrets of a person other than the requester concerned,

(b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or

(c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

(2) A head shall grant an FOI request to which subsection (1) relates if—

(a) the person to whom the record concerned relates consents, in writing or in such other form as may be determined, to access to the record being granted to the requester concerned,

(b) information of the same kind as that contained in the record in respect of persons generally or a class of persons that is, having regard to all the circumstances, of significant size, is available to the general public,

(c) the record relates only to the requester,

(d) information contained in the record was given to the FOI body concerned by the person to whom it relates and the person was informed on behalf of the body, before its being so given, that the information belongs to a class of information that would or might be made available to the general public, or

(e) disclosure of the information concerned is necessary in order to avoid a serious and imminent danger to the life or health of an individual or to the environment,

but, in a case falling within paragraph (a) or (c), the head shall ensure that, before granting the request, the identity of the requester or, as the case may be, the consent of the person is established to the satisfaction of the head.

(3) Subject to section 38, subsection (1) does not apply in relation to a case in which, in the opinion of the head concerned, the public interest would, on balance, be better served by granting than by refusing to grant the FOI request.

(4) Where—

(a) an FOI request relates to a record to which subsection (1) applies but to which subsections (2) and (3) do not apply or would not, if the record existed, apply, and

(b) in the opinion of the head concerned the disclosure of the existence or non-existence of the record would have an effect specified in subsection (1),

he or she shall refuse to grant the request and shall not disclose to the requester concerned whether or not the record exists.